

REMARKS

This Amendment is in response to the Office Action mailed on April 27, 2004.
All objections and rejections are respectfully traversed.

Claims 21-65 are in the case.

Claims 1-20 have been canceled without prejudice.

Claims 21-65 have been added to better claim the invention.

The drawings have been amended, as shown in the attached annotated sheet and accompanying formal versions thereof. No new matter has been entered, and the drawings are believed to be in allowable condition.

The Specification has been amended to correct typing errors. No new matter has been entered, and the Specification is believed to be in allowable condition.

At paragraph 2 of the Office Action, the drawings were objected to for failing to comply with 37 C.F.R. §1.84(p)(5). The Specification has been amended as noted above. Applicant believes that the amendments contained therein obviate the rejections to the drawings under 37 C.F.R. §1.84(p)(5).

At paragraph 3 of the Office Action, claims 7, 11, and 20 were objected to for informalities. Claims 1- 20 have been canceled without prejudice and the new claims 21 *et seq.* are believed to be in allowable condition.

At paragraph 5 of the Office Action, claims 7-20 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 8-21 respectively of

compending Application No. 09/933,866, hereinafter Application '866. At paragraph 8 of the Office Action, claim 1 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of compending Application '866 in view of Pitt et al., U.S. Patent No. 5,717,934, issued on February 10, 1998, hereinafter Pitt. Original claims 1-20 have been canceled, and new claims 21 *et seq.* are believed to more clearly point out that the present Application and Application '866 are patentably distinct in scope. Namely, the Application '866 claims are for an *operator initiated* graceful takeover, while the present claims are directed toward a *negotiated* graceful takeover (i.e. a takeover that occurs without the need for operator intervention). Accordingly, new claims 21 *et seq.* are believed to be distinguishable and non-obvious from related Application '866.

At paragraph 11 of the Office Action, claims 4, 8, and 15 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Again, claims 1-20 have been canceled without prejudice and the new claims 21 *et seq.* are believed to be in allowable condition.

At paragraph 16 of the Office Action, original claim 19 was rejected under 35 U.S.C. §102 as being anticipated by Kleiman et al., PCT International Application Publication WO 00/11553, published on March 2, 2000, hereinafter Kleiman. At paragraph 19 of the Office Action, original claims 1-18 and 20 were rejected under 35 U.S.C. §103 as being unpatentable over Kleiman in view of Pitt. Although original claims 1-20 have been canceled, Applicant feels it may be necessary to distinguish new claims 21 *et seq.* from Examiner's cited art, as the new claims contain much of the same subject matter as the canceled claims.

The present invention, as set forth in representative claim 21, comprises in part:

A method for use in a negotiated graceful takeover in a computer cluster having a first and second computer, the method comprising the steps of:

detecting an operational fault at the first computer;

requesting, from the first computer, in response to the operational fault, that the second computer take over for the first computer;

requesting, from the second computer, that the first computer shut down;

completing service requests at the first computer pending at the time the first computer was requested to shut down;

transferring responsibilities of the first computer to the second computer; and

shutting down the first computer.

Kleiman discloses a system for coordinating persistent status information with multiple computers. Kleiman teaches a rapid, hard takeover among a plurality of independent computers. In this system, each computer confirms the state of the other computers through the use of a takeover monitor, and attempts to takeover when other computers are clearly unable to provide their share of services; e.g. a service interrupted computer. This takeover operation results in the interrupted computer being forced to shut down as soon as possible. After the hard shut down, a partner computer will take control of the interrupted computer's duties. This shut down is an unclean, or hard shutdown, where service requests that are not yet complete can be lost before they are stored, requiring the a repeat service request at the partner computer.

Pitt discloses a sequential computer network shutdown system and process. Pitt teaches the application of shutdown software and the use of UPSs (uninterruptable power supplies) among a plurality of network devices, such as computers and workstations. In the event of a power failure or manual shutdown, a system administrator, according to Pitt, will have established rules for a shutdown sequence of the devices in the network.

For example, an administrator may assure that the workstations and their processes are shut down prior to the computers and their processes, and that it is all done within the allotted UPS time limit after loss of power.

Applicant respectfully urges that neither Kleiman nor Pitt disclose Applicant's claimed novel "*completing service requests at the first computer pending at the time the first computer was requested to shut down, and transferring responsibilities of the first computer to the second computer.*"

Applicant's claimed invention is directed to a method and system for a negotiated *graceful* takeover of a computer. This graceful takeover is performed first by requesting the takeover of a first computer and letting the first computer complete existing service requests. Once the service requests are completed, the first computer then shuts down and responsibilities of the first computer are transferred to a second computer. Kleiman only addresses the hard takeover of computers, where a takeover does not allow the completion of service requests, and does not address graceful takeovers. Pitt only discloses the sequencing of network device shutdowns during a power interruption, and does not address graceful takeovers, particularly the transfer of control of one computer to another.

Applicant respectfully urges that the Kleiman document and the Pitt patent, either taken singly or taken in any combination are legally precluded from anticipating the claimed invention under 35 U.S.C. §102 and are legally insufficient to render the presently claimed invention obvious under 35 U.S.C. §103 because of the absence in each of the cited documents of Applicant's claimed novel "*completing service requests at the first computer pending at the time the first computer was requested to shut down, and transferring responsibilities of the first computer to the second computer.*"

Furthermore, Applicant respectfully urges that Kleiman and Pitt both teach away from Applicant's claimed invention. Kleiman teaches away by immediately taking over for a computer, without allowing the computer to complete the processing of its pending service requests. Pitt teaches away from Applicant's claimed invention by teaching a method for shutting down a computer without providing another computer to take over control of its responsibilities. Applicant respectfully urges, accordingly, that there is no motivation to combine Kleiman and Pitt to teach or suggest Applicant's claimed novel ***"completing service requests at the first computer pending at the time the first computer was requested to shut down, and transferring responsibilities of the first computer to the second computer."***

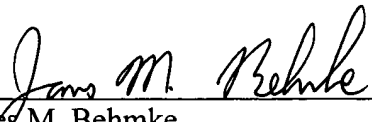
All independent claims are believed to be in allowable condition.

All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,



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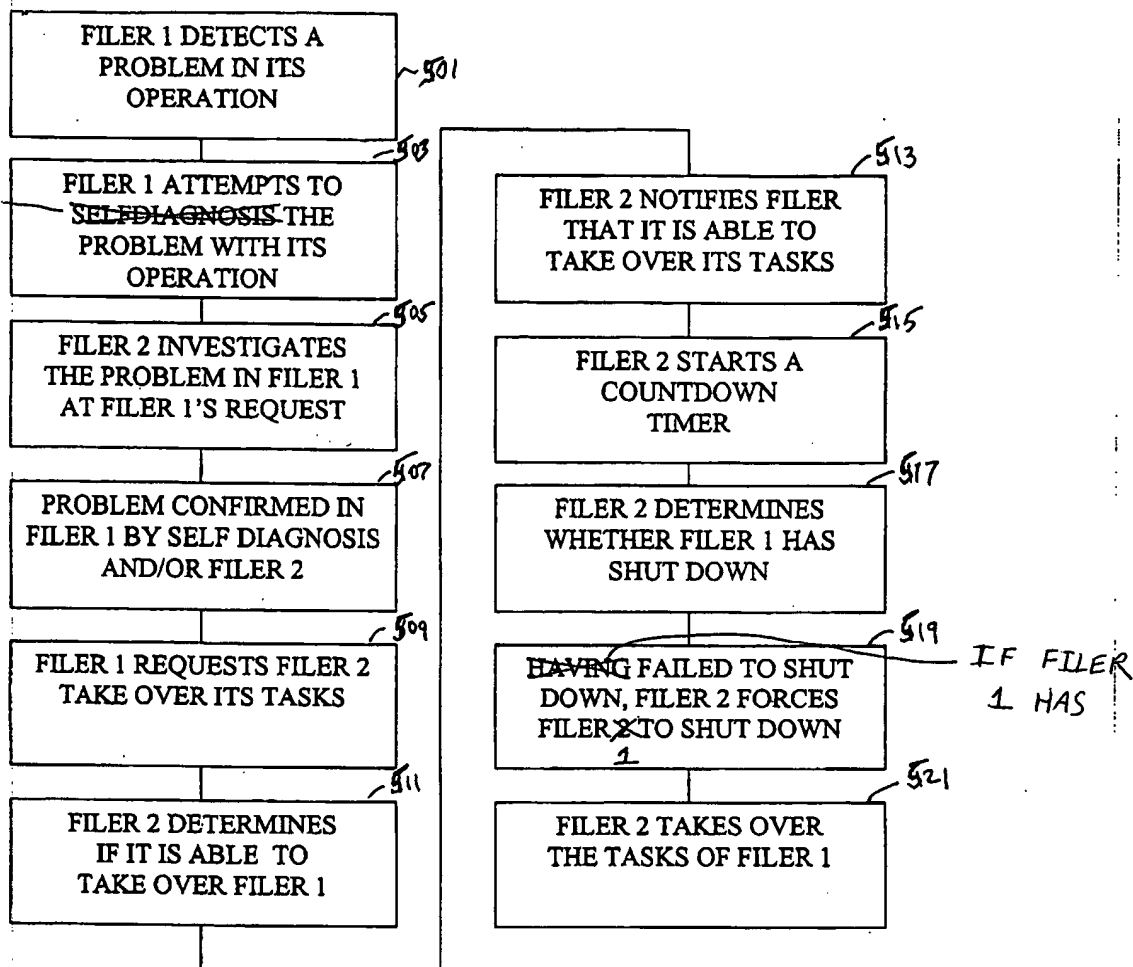


Fig. 5

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